IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

OP.No. 38418 of 2002(W)

PETITIONER:

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1. J. RADHAKRISHNA NAIK, CORPORATE MANAGER, T.D. SCHOOLS, ALAPPUZHA RESIDING AT "REVATHI NIVAS", C.M.C. 2, CHERTHALA.

2. K.S. BINDHU MOL, PHYSICAL EDUCATION TEACHER, T.D. HIGHER SECONDARY SCHOOL, THURAVOOR, ALAPPUZHA DISTRICT.

BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.RESMI G. NAIR

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DIRECTOR OF PUBLIC INSTRUCTION, THIRUVANANTHAPURAM.

3. THE DISTRICT EDUCATIIONAL OFFICER, CHERTHALA.

4. A.S. PRADEEPKUMAR, PHYSICAL EDUCATION TEACHER, TDTTI, THURAVOOR, ALAPPUZHA DISTRICT.

BY ADV. SRI.M.A.FIROZ
SRI.C.S.ULLAS
SR. GOVERNMENT PLEADER SMT. M.R. SREELATHA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 11/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.NO.38418 OF 2002

ORDER ON C.M.P.NO.64918 OF 2002 IN O.P.NO.38418 OF 2002
DISMISSED

11.09.2007 SD/- S. SIRI JAGAN, JUDGE.

APPENDIX

PETITIONERS EXHIBITS

EXT.P1: TRUE COPY OF THE ORDER NO.46/2000/TD DATED 26.6.00 OF THE CORPORATE MANGER, T.D. SCHOOLS, ALAPPUZHA.

EXT.P2: TRUE COPY OF THE ORDER NO.B6-5639/2000/DEO(C)/L.DIS. DATED 27.11.2000 OF THE 2ND RESPONDENT.

EXT.P3: TRUE COPY OF THE REVISION PETITION FILED BY THE 1ST PETITINER ON 26.12.2000 BEFORE THE 2ND RESPONDENT.

EXT.P4: TRUE COPY OF THE ORDER D.DIS.B6-5940/2000/DEO(C) DATED 30.8.2000 OF THE 3RD RESPONDENT.

EXT.P5: TRUE COPY OF THE ORDER NO.D. DIS. B4860/00/RA11)DPI DATED 2.2.2001 OF THE 2ND RESPONDENT.

EXT.P6: TRUE COPY OF THE ORDER NO.D.DIS/19397/2001/RAI/DPI DATED 20.3.2001 OF THE JOINT DIRECTOR OF PUBLIC INSTRUCTION, KERALA, TVPM.

EXT.P7: TRUE COPY OF THE PETITION FILED BY THE 1ST PETITIONER BEFORE THE 1ST RESPONDENT DT. 26.3.01.

EXT.P8: TRUE COPY OF THE ORDER G.O.(RT)NO.3906/01/G.EDN. DATED 17.10.2001.

EXT.P9: TRUE COPY OF THE JUDGMENT IN O.P.33367/01-V OF THIS HON'BLE COURT.

EXT.P10: TRUE COPY OF THE JUDGMENT IN W.A.3970/2001 DATED 12.12.2001 OF THIS HON'BLE COURT.

EXT.P11: TRUE COPY OF THE JUDGMENT IN O.P.25882/2001 DATED 8.10.2001 OF THIS HON'BLE COURT.

EXT.P12: TRUE COPY OF THE GOVERNMENT LETTER NO.57456/KI/01/G.EDN. DATED 28.9.2002.

EXT.P13: TRUE COPY OF THE G.O.(RT)NO.3970/02/G.EDN. DATED 13.11.2002.

EXT.P14: TRUE COPY OF THE G.O.(RT)NO.4776/92/G.E. DATED 30.11.92

TRUE COPY

PA TO JUDGE.

S. SIRI JAGAN, J.

O.P.NO. 38418 OF 2002

DATED THIS THE 11th DAY OF SEPTEMBER, 2007

JUDGMENT

The Manager and a Physical Education Teacher appointed by the Manager whose appointment has not been approved by the Educational Authorities, are the petitioners herein. The Educational agency has different schools, one is the T.D.T.T.I. School, Thuravoor and the other is T.D. H.S.S. Thuravoor. A vacancy of Physical Education Teacher arose in TDHSS, Thuravoor for the year 2000-2001 on account of retirement of an incumbent. The 2nd petitioner was appointed to that post. By Ext.P2 order, the D.E.O. refused to approve the said appointment on the ground that there is one protected teacher namely Sri. K.S. PradeepKumar working in the TDTTI, Thuravoor (4th respondent herein), who has to be absorbed against a regular vacancy and after adjusting him against the vacancy to which the 2nd petitioner has been appointed there would be no vacancy for the 2nd petitioner. The situation in TDTTI school made mention of in Ext.P2 order arose on account of Ext.P4 staff fixation order whereby the post of Physical Education Teacher was abolished for the year 2000-2001. The Manger's appeal was rejected and after a series of

litigation as directed by a Division Bench in Writ Appeal the Government passed Ext.P13 order rejecting the revision filed by the 1st petitioner. The petitioners challenge EXts.P2 and P13 orders. According to the petitioners by virtue of Government orders on the subject the post of Physical Education Teacher could not have been abolished for the year 2000-2001 since that post was in existence from 1978 onwards and the 4th respondent was continuously working in that post. If that post could not have been abolished then the question of accommodating Sri. Pradeepkumar against the vacancy which arose in TDHSS also does not arise is the contention raised by the petitioners herein.

2. I have heard the learned Government pleader also. I have considered the rival contentions in detail. The 4th respondent was in service as a Physical Education Teacher in the TDTTI, Thuravaoor from 25.7.1978 which is not in dispute before me. By virtue of G.O.(MS)No.203/91/G.Edn. dated 27.12.1991 the Government ordered that the post of Physical Education Teacher existed during 1990-91 in the High Schools and Upper Primary Schools/U.P. Sections of the High Schools both Government and aided schools will continue during 1991-92 also. By successive Government orders the concession granted by the above G.O. was being extended from year to year and by G.O.(Rt) No.3065/2000/G.Edn. dated 25.7.2000 the concessions were

extended for the staff fixation of the year 2000-2001 also. In fact that concession was extended for subsequent periods also. This aspect has not considered either by the DEO or the Government in Exts.P4 and P13. Respondents 1 to 3 could not satisfy me that those Government orders are not applicable to the post of Physical Education Teacher occupied by the 4th respondent from 25.7.78 in the TDTTI, Thuravoor. That being so, that post could not have been abolished as done in Ext.P4. Therefore, Exts.P4 and P13 are very contrary to the above said Government orders and accordingly, Ext.P4 to the extent it abolishes posts of Physical Education Teacher in TDTTI, Thuravoor and Ext.P13 which upholds Ext.P4 are hereby quashed.

3. If the Physical Education Teacher's post continues to exist for 2000-2001 also, it goes without saying that the 4th respondent could not have been rendered as a protected teacher and the question of he being adjusted against the regular post in TDTTI, Thuravoor does not arise. That being so, Ext.P2 order refusing to approve the appointment of the 2nd petitioner in the vacancy which arose in TDHSS, Thuravoor also is unsustainable. Accordingly, Ext.P2 is also quashed. The 3rd respondent is accordingly directed to pass consequential orders in accordance with the above findings. Regarding the continuance of the 4th respondent in TDTTI, Thuravoor as Physical Education Teacher, as

long as the Government orders referred to above are in force he is entitled to continue as such. The 3rd respondent is further directed to approve the appointment of the 2nd petitioner to the post of Physical Education Teacher which arose in the TDHSS, Thuravoor for the year 2000-2001 which was earlier refused to be approved by Ext.P2. By interim order dated 19.12.02 this Court had granted interim stay of termination of service of the 2nd petitioner on condition that the claim for salary would decided when the O.P. is disposed of. Now that I have held that the 2nd petitioner's appointment was liable to be approved and she had actually worked in that post all through out by virtue of the interim order, the 2nd petitioner would be entitled to salary also for the period she worked. Accordingly, the orders retaining the 4th respondent at TDTTI, Thuravoor and approving the appointment of the 2nd petitioner at TD HSS, Thuravoor shall be passed within one month from the date of receipt of a copy of this judgment. Arrears of salary due to the 2nd petitioner shall also be disbursed within one month from the date of passing orders as above.

The original petition is disposed of as above.

S. SIRI JAGAN, JUDGE

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